

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JEFF E. WALKER,

12 Plaintiff,

13 v.

14 C/O D. HUBERT, et al.,

15 Defendant.
16
17

Case No.: 3:14-cv-0788 BTM (KSC)

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(ECF No. 115)

18 Jeff E. Walker (“Plaintiff”), is a prisoner currently incarcerated at San Francisco
19 County Jail in San Francisco, California, and is proceeding *pro se* in this civil action
20 pursuant to 42 U.S.C. § 1983. Defendants are all correctional and medical care officials
21 employed at Richard J. Donovan Correctional Facility (“RJD”) where Plaintiff was
22 incarcerated in 2014.

23 **I. Procedural History**

24 This matter has a lengthy procedural history and the Court will address only those
25 events that are relevant to the pending motion. Initially, the Court found that Plaintiff
26 was barred from proceeding *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(g).
27 (Doc. No. 10.) However, Plaintiff later filed a motion for reconsideration in which he
28 was able to demonstrate that he was entitled to the “imminent danger exception” of

§ 1915(g) and the Court granted his request to proceed IFP. (Doc. No. 14.) The Court also screened Plaintiff's Complaint as required by 28 U.S.C. § 1915(e)(2) and § 1915A(b) and found that his Complaint contained allegations sufficient to survive the sua sponte screening process. (*See id.*)

On May 1, 2015, Defendants Donoghue, Hubert, Luna, Moore and Murphy¹ filed a Motion for Summary Judgment pursuant to FED. R. CIV. P. 56 based on Plaintiff's failure to properly exhaust available administrative remedies prior to filing suit, as is required by 42 U.S.C. § 1997e(a) (Doc. No. 51). The Court notified Plaintiff of the requirements for opposing summary judgment, including opposing a motion for summary judgment brought on exhaustion grounds, pursuant to *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc). (Doc. No. 56.)

The dates to file an Opposition and Reply were later extended to allow the parties time to conduct some discovery related to the exhaustion issue. (Doc. No. 72.) Plaintiff filed several motions to compel discovery and other requests that were granted in part, and denied in part. On January 26, 2016, Plaintiff filed yet another motion for extension of time to respond to Defendants' summary judgment motion which was granted by the Court. (Doc. Nos. 105, 107.) Plaintiff was given until February 26, 2016 to file an opposition to Defendants' Motion but failed to do so.²

On March 28, 2016, the Court granted Defendants' Motion for Summary Judgment and entered judgment for all named Defendants. (Doc. Nos. 112, 113.) On April 18, 2016, Plaintiff filed a "Motion to Recall Court's Order Granting Summary Judgment; Reconsideration of Extension Good Cause or Request Notice to Appeal the Court's Denial and Ruling." (Doc. No. 115.)

¹ Defendant Acuna has not appeared in this action and the summons naming Defendant Acuna was returned unexecuted. (Doc. No. 26.)

² Plaintiff did file yet another request for extension of time to file his opposition on March 8, 2016, several days *after* his opposition was due which the Court denied as Plaintiff has already been given nine months to file an opposition and the Court found that he failed to show good cause why he should receive any further extensions of time. (ECF Nos. 110, 111.)

1 **II. Plaintiff's Motion for Reconsideration**

2 **A. Standard of Review**

3 The Federal Rules of Civil Procedure do not expressly provide for motions for
4 reconsideration. However, a motion requesting reconsideration of a matter previously
5 decided may be construed as a motion to alter or amend judgment under Rule 59(e) or
6 Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989); *In re*
7 *Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir. 1994). Under Rule
8 60, a motion for "relief from a final judgment, order or proceeding" may be filed within a
9 "reasonable time," but usually must be filed "no more than a year after the entry of the
10 judgment or order or the date of the proceeding." Fed.R.Civ.P. 60(c)(1).

11 Reconsideration under Rule 60 may be granted in the case of: (1) mistake, inadvertence,
12 surprise or excusable neglect; (2) newly discovered evidence; or (3) fraud; or if (4) the
13 judgment is void; (5) the judgment has been satisfied; or (6) other reason that justifies
14 relief. Fed.R.Civ. P. 60(b).

15 **B. Plaintiff's Motion**

16 Plaintiff argues that he has been provided insufficient amounts of time in the law
17 library where he is currently housed. Plaintiff also claims that the times he was permitted
18 to attend the law library, he only had time to research his other ongoing criminal and civil
19 proceedings.³

20 ///

25 ³ To the extent that Plaintiff again seeks reconsideration of his motions seeking access to a typewriter,
26 the Court will not consider these arguments. Plaintiff has already filed various motions on this exact
27 issue. (*See* Doc. Nos. 97, 101, 104, 110.) Magistrate Judge Karen Crawford has already denied these
28 requests, as well as a motion for reconsideration of the denial of the use of a typewriter. Plaintiff
addresses nothing new in the instant motion that has not been addressed in Judge Crawford's previous
Orders. (*See* Doc. Nos. 95, 98, 108.) Moreover, in N. Gregoratos' declaration he states that the San
Francisco Jail does not possess typewriters. (*See* Doc. No. 106-1 at 2.)

1 Defendants filed the Motion for Summary Judgment nearly one year ago on May
2 1, 2015. Plaintiff was given multiple extensions of time to file an Opposition. (*See* Doc.
3 Nos. 79, 98, 107.) The issue raised in Defendants' Motion was exhaustion of
4 administrative remedies which requires Plaintiff to provide a factual response to the
5 claims that were raised and provide documentation demonstrating that he had submitted
6 grievances related to the claims in his Complaint. He did not do so despite having nearly
7 nine months to respond to Defendants' Motion.

8 In addition, Defendants had previously supplied the declaration of N. Gregoratos,
9 the Director of Prisoner Legal Services for the San Francisco County Sheriff's
10 Department, in which he indicates that Plaintiff attended the jail's law library twelve (12)
11 times in the two months before his Opposition was due in this matter. (Doc. No. 106-1 at
12 2.) Moreover, he states that his office had a "minimum of 172 contacts" with Plaintiff
13 between June and December 2015 which "included supplying him with case law and
14 other legal materials and filing and mailing legal documents." (*Id.*) While Plaintiff
15 argues that he was focusing on his other criminal and civil matters, that does not
16 overcome the fact that he failed to file an Opposition in this matter despite being given
17 numerous opportunities over several months.

18 Plaintiff has provided no basis for the Court to vacate the March 28, 2016 Order
19 granting Defendants' Motion for Summary Judgment. A motion for reconsideration
20 cannot be granted merely because Plaintiff is unhappy with the judgment, frustrated by
21 the Court's application of the facts to binding precedent or because he disagrees with the
22 ultimate decision. See 11 Charles Alan Wright & Arthur R. Miller Federal Practice &
23 Procedure 2d § 2858 (Supp. 2013) (citing *Edwards v. Velvac, Inc.*, 19 F.R.D. 504, 507
24 (D. Wis. 1956)).

25 **C. Request to Appeal**

26 As stated above, Plaintiff seeks reconsideration of the Court's Order granting
27 Defendants' Motion for Summary Judgment and the Order denying Plaintiff's requests
28 for extension of time to file an Opposition. In the alternative, Plaintiff requests "notice to


1 appeal these issues.” Pl.’s Mot. at 14. While Plaintiff may choose to file a notice of
2 appeal, the Court **CERTIFIES** that an IFP appeal from this Order, as well as the Order
3 denying Plaintiff’s request for extension of time and the Order granting Defendants’
4 Motion for Summary Judgment, to the Ninth Circuit Court of Appeals would not be
5 taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*,
6 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent
7 appellant is permitted to proceed IFP on appeal only if appeal would not be frivolous).

8 **III. Conclusion and Order**

9 Good cause appearing, the Court:

10 **DENIES** Plaintiff’s Motion for Reconsideration (Doc. No. 115). The Clerk of
11 Court is directed to close the file.

12
13 Dated: May 10, 2016

14 
15 Hon. Barry Ted. Moskowitz
16 United States Chief District Judge
17
18
19
20
21
22
23
24
25
26
27
28